THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE B. KRISHNA MOHAN

M.A.C.M.A. No. 526 of 2018

ORDER:

1) The present Appeal is filed by the Insurance Company under Section 173 of the Motor Vehicle Act, assailing the Order, dated 06.09.2017, passed in M.V.O.P. No. 525 of 2015 on the file of the Motor Accidents Claims Tribunal-CUM- IV Additional District Judge, Kadapa, wherein, the claim of the respondent/petitioner was accepted and compensation of Rs.25,83,378/- was awarded.

2) For the sake of convenience, the parties will be referred to as arrayed in the Original Petition.

3) The averments in the claim petition filed under Section 166 of the Motor Vehicles Act are as under:-

i) The Claimant/Petitioner filed an application claiming compensation of Rs.26,00,000/- for the injuries sustained by him in a motor accident that occurred on 18.06.2015 at 5.00 PM on NH-40, Kadapa –Rayachoty main road at Guvvala Cherugu ghat road. The averments in the claim petition show that, on the said date, the Claimant and some others of his village, namely, Konduru Vali and Kotapeta Kamal boarded a Bolero pickup vehicle bearing registration No.AP 04 TU 6966 belonging to one Darbar Basha and while they were getting down at Guvvala Cherugu ghat, a lorry

bearing registration No. TN 52 A 9767 driven by its driver in a rash and negligent manner came from behind in high speed and dashed the Bolero pickup vehicle, resulting in severe injuries to the Claimant. The Claimant and others were shifted to RIMS and then to Christian Medical College, Vellore, where he was treated and discharged on 12.07.2015. It is said that, on account of injury, the Claimant sustained permanent disablement and is left leg was amputated above knee.

4) Counter came to be filed by the respondent no.3/ insurance company, while, respondent no. 1 and 2 who are the owner and driver remained ex-parte. The insurance company denied the averments made in the petition.

(i) It is stated that, the application is bad for non-joinder of owner and insurance company of Bolero vehicle. It is further pleaded that, the accident occurred only due to the sole negligence of the driver of the lorry who applied sudden brakes without taking proper precaution. It is stated that, the Claimant failed to file any documents of treatment taken by him in different hospitals and also the expenditure that is incurred towards medication. It is further stated that, there is no possible evidence before the court to prove that the Claimant could not do agricultural work and that he could not able to attend nature calls on his own, and that he has to take support from others. It is further stated that, the Claimant must prove that he own acres 8.78 cents of land and earning

Rs.4,00,000/- from agriculture and he being disabled will not be in a position to actively do the agricultural operations and hence denies that the Claimant earns a sum of Rs.8,000/- per month.

5) Basing on the above pleading, the Tribunal framed the following issues:

i) *"Whether the Petitioner sustained injuries in a motor vehicle accident that occurred on 18.06.2015 at 5.00 PM due to negligent driving of lorry bearing No. TN 52 A 9767 or not?*

ii) *Whether the Petitioner is entitled to any compensation, if so to what amount and from whom?*

iii) *To what relief?*

6) In support of its claim, the Claimant examined PW1 to PW4 and got marked Ex.A1 to Ex.A18, while no oral or documentary evidence was adduced by Respondent No.3.

7) Considering the evidence on record, the Tribunal awarded Rs.25,83,378/- with interest thereon at the rate of 9% per annum from the date of filing of the petition till the date of deposit with costs against Respondent Nos. 1 to 3 jointly and severally and by virtue of contractual obligations, Respondent No. 3 is liable to indemnify Respondent No. 2. Challenging the same, the present Appeal is filed by the Respondent No.3 -Insurance Company [Appellant] under Section 173 of the Motor Vehicle Act.

8) Insofar as the incident proper is concerned, the material on record shows that, the incident took place on 18.06.2015 when the vehicle was passing through Guvvala Cheruvu ghat situated on kadapa-Rayachoty road. Immediately, after the incident, a report

came to be lodged, which lead to registration of Cr. No. 129 of 2015 for the offence punishable under Section 337 IPC against Respondent No. 1 for his negligent driving. Ex.A1 is the attested copy of First Information Report. Ex.A2 is the attested copy of charge-sheet filed by the police after concluding the investigation. From these two exhibits coupled with oral evidence of PW1, it is very clear that, the incident in question took place due to rash and negligent driving of the driver of the lorry.

9) Coming to the quantum of compensation awarded under various heads, the provisions of the Motor Vehicle Act makes it clear that, the compensation to be awarded must be just and this being a beneficial legislation, care should be taken while awarding compensation. The principles laid down in ***Arvind Kumar Mishra v. New Indian Assurance Co. Ltd & Anr.***[1] are required to be followed in determining the quantum of compensation to be awarded to the victim of an accident, who is disabled either permanently or temporarily. In the said case, it has been held that, *"if the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident".*

[1] 2010 ACJ 2867

10) Keeping in mind the law laid down by the Apex Court with regard to the persons who suffered permanent disability, we shall now proceed to deal with the matter.

11) As seen from the record, in the instant case, the Claimant's left leg was amputated due to accident, which occurred on 18.06.2015. It is also to be noted that, the Claimant was initially taken to RIMS, Cuddapah and from there to Christian Medical College, Vellore, where he was treated as an inpatient till 12.07.2015. Admittedly, the Claimant was aged about 45 years at the time of accident and was an agriculturist. According to Claimant, he was getting an income of Rs.8,000/- per month from agriculture. He placed on record the 1-B Register under Ex.A12 to show that he got agricultural lands, but, however, he did not file any documents to show the income deriving from the agricultural lands. Therefore, the main ground urged by the learned counsel for the appellant-insurance company is that the amount of Rs.8,000/- per month claimed and awarded by the Tribunal as monthly notional income of the Claimant is on a higher side.

12) In ***Ponnumani @ Krishnan and another v. A. Mohanan and others***[2] the Hon'ble Supreme Court held that, *"since the lands owned by the petitioner are still intact, it cannot be said that there is total loss of income due to the injury suffered by the appellant and that the calculation of the amount of compensation basing on notional income cannot be faulted with".*

[2] AIR 2008 (SC) 2014

13) The question is *what should be the notional income of the Claimant herein*?

14) The learned counsel for the appellant placed reliance on the judgment of the Hon'ble Supreme Court in ***Arvind Kumar Mishra v. New Indian Assurance Co. Ltd & Anr*** [supra], wherein, the notional income of the appellant therein who was a student of engineering final year at Birla Institute of Technology, Mesra, was taken at Rs.5,000/- per month, equivalent to Rs.60,000/- per year. Relying on the above, the learned Counsel for the appellant would contend that, the Claimant herein, at the most, 'lost' only the supervisory charges and therefore, his income per month has to be fixed at Rs.5,000/- and not Rs.8,000/-.

15) It is to be noted that, to an agriculturist, loss of leg vitally affects not only his working capacity but also his livelihood. In this context, Lord Denning M.R. in ***Lim Poh Choo v. Camden and Islington Area Health Authority*** [(1979) 1 All ER 332] quoted with approval the observations of Parke B, which are as under: -

> *'Scarcely any sum could compensate a labouring man for the loss of a limb, yet you do not in such a case give him enough to maintain him for life... You are not to consider the value of existence as if you were bargaining with an annuity office... I advise you to take a reasonable view of the case and give what you consider fair compensation.'*

16) The learned counsel for the respondent placed reliance on the judgment of the Hon'ble Supreme Court in ***Jagdish v. Mohan &***

Ors[3] , wherein, the Claimant therein sustained 90% permanent disability, as in the case on hand, and while determining the quantum of compensation to be paid in respect of the said person, who was a Carpenter and whose hands were amputated, the Apex Court fixed the income of the petitioner at the rate of Rs.4,050/- per month as against the claim of Rs.6,000/- per month.

17) In ***V Mekala v. M Malathi and Anr***[4] the Apex Court was dealing with a case where the Claimant was a student studying 11th standard holding 1st rank in her school. Due to the accident, she sustained grievous injuries and permanent disability. Disagreeing the view taken by the Tribunal and also the High Court, the Hon'ble Supreme Court while fixing the notional income, took the monthly income of the said student as Rs.10,000/- per month for computing a just and reasonable compensation under the head loss of income. The Apex Court commented upon the High Court as it failed to take into consideration the future prospects of income based on the principles laid down by the Apex Court and accordingly allowed the appeal filed by the Claimant enhancing the compensation.

18) In ***Sukhraj Kaur v. Sadhu Ram***[5] the learned Single Judge of the Punjab and Harayana at Chandigarh, while dealing with the case of an agriculturist, who was owning 13 acres of land, put the notional income of the deceased at Rs.10,000/- per month.

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[3] 2018 ACJ 1011
[4] 2014 ACJ 1441
[5] 2016 ACJ 2788

19) In view of the guidelines, the learned counsel for the respondent would submit that, fixing the income at Rs.8,000/- per month would be just and proper, but, the same is disputed by the learned counsel for the appellant.

20) Insofar as the other claims are concerned, namely, transport charges; medical bills; amount required for artificial leg; pain and suffering; compensation towards permanent disability is not seriously disputed by the learned counsel for the appellant-insurance company. As stated by us earlier, the counsel for the appellant only sought reduction in the monthly income of the injured agriculturist as he lost only supervisory charges and that he will continue to get income from his mango garden. Apart from that, it is to be noted that, the counsel for the appellant did not dispute the disability of the Claimant as 90% permanent disability.

21) From the evidence on record, it is clear that the Claimant was owning about acres 8.78 cents of land, in which, there is a mango garden and claims to be earning about Rs.4,00,000/- from the said land. But, there is no basis for the Claimant to claim that he was earning about Rs.4,00,000/- from acres 8.78 cents of land, which he is holding. At the same time, the claim of the Claimant that he was earning Rs.8,000/- per month was disputed by the counsel for the appellant herein. But, however, the Tribunal awarded a sum of Rs.8,000/- per month as a income from agriculture. Since, it is not a case of death and as the land of the Claimant, more particularly, the mango garden remained with him, getting the yield as before, the

maximum that he will lose would be supervisory charges, i.e., engaging a person to supervise the operations of acres 8.78 cents of land, which would not be more than 1,500/- per month, more so, when it can be taken note of the fact that, not much supervision would be necessary when a mango tree grows up. This aspect was not dealt with by the Tribunal.

22) As seen from the record, the claimant is said to be holding Ac.8.78 cents of land in which there is a mango garden. The material on record shows that there are number of trees in the said land. Learned counsel for the appellant would submit that it will be just and proper to fix the notional income at the rate of Rs.5,000/- per month. The same is disputed by the counsel for the claimant. But, having regard to the facts and circumstances of the case and the nature of injuries sustained and since the respondent-claimant would be totally dependent on others for maintaining the mango garden i.e., supervising charges and also bringing manure, fertilizer etc., from outside, it will be just and proper to fix the income at around Rs.6,500/- per month after deducting the supervisory and other charges.

23) In view of the law laid down by the Apex Court in ***National Insurance Company Limited v. Pranay Sethi and Ors***[6] the Claimant would be entitled to the compensation for the loss of future prospects even though self-employed. The Claimant did not prefer any appeal seeking enhancement of compensation. However, it is

[6] AIR 2017(SC) 5157

now well settled that, the amounts can be adjusted on different heads from the quantum of compensation awarded and challenged by the insurance company. Therefore, even if the income of the Claimant is reduced, as urged by the appellant-insurance company, but, in view of the judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and Ors*** and ***Jagdish v. Mohan & Ors*** [surpa], the Claimant herein would be entitled for the loss of future prospects.

24) Though it is not a case of death, but, having regard to the fact that the claimant suffered 90% disability and in view of the ratio laid down in **Jagdish v. Mohan & Ors.**[7], wherein the Court extended payment of future prospects even in a case of permanently disabled individuals, claimant is entitled to future prospects. As the age of the appellant was 45 years at the time of the accident and taking into consideration the ratio laid down in **National Insurance Company Limited Vs. Pranay Sethi and others**[8]**,** we hold that the appellant is entitled to 25% of his income towards future loss of income. If the notional income of the claimant is taken at Rs.6,500/- or little less per month and if 25% of it i.e. Rs.1,625/- added to the income, towards future prospects, the same comes to Rs.8,125/-. As stated earlier, in view of the judgment of **Sarla Verma (supra),** suitable multiplier for calculating the loss of earnings would be '14'. Therefore, the loss of earnings on account of 90% disability would be Rs.8,125 x 12 x 14 x 90% = 12,28,500/-.

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[7] 2018 LawSuit(SC) 196
[8] (2017) ACJ 2700

25) Having regard to the above, we dispose of the present appeal holding that, if the compensation for loss of future prospects of the Claimant is taken into consideration, as he suffered 90% of permanent disability, as in the case of ***Jagdish v. Mohan & Ors***, (supra) and if the monthly income of the Claimant is fixed as Rs.6,500/-, as the Claimant lost only supervisory charges, the Claimant would be entitled to more than what has been awarded.

26) Having regard to the above, we see no reason to interfere with the Order passed by the Tribunal awarding compensation in M.V.O.P. No. 525 of 2015 on the file of the Motor Accidents Claims Tribunal-CUM- IV Additional District Judge, Kadapa.

27) Accordingly, the Appeal is ***disposed off***. No order as to costs.

28) Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE B. KRISHNA MOHAN

Date: 29/07/2020
SM/SKMR.

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

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